IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

REVIEW PETITION NO.20 OF 2005
IN
WRIT PETITION NO.4608 OF 2004

The Chief Executive Officer)
Zilla Parishad, Kolhapur.).. Applicant

Versus

The State of Maharashtra and others).. Respondents

Mr.S.B.Shetye for the Applicant.

Mr.R.D.Rane, Additional Government Pleader, for Respondent Nos.1 and 2.

Mr.N.V.Bandiwadekar for Respondent No.3.

CORAM: H.L. GOKHALE AND
S.P. KUKDAY, JJ.
DATED: 16TH JUNE 2005

P.C.:

. Heard Mr.Shetye in support of this Review Petition which is filed by the Executive Officer, Zilla Parishad, Kolhapur. Mr.Rane, Additional Government Pleader, appears for Respondent Nos.1 and 2 and Mr.Bandiwadekar appears for Respondent No.3.

2. Rule. Rule made returnable forthwith. All the learned Counsel are heard. The contesting Respondent No.3 has filed a reply to this Review Petition.

3. The Petition seeks a review of the order passed by Division Bench in Writ Petition No.4608 of 1999 on 8th October 1999. That Petition was filed by Respondent

No.3. and the order of which review is sought is an order in terms of the Minute tendered by the parties. The Court has passed an order in terms thereof. However, the Minute provided that the Petition will remain pending. The Division Bench had disposed it of while granting revival in case of difficulty. The two Judges who passed that order have since retired and, therefore, this matter is placed before this Bench.

4. The Respondent No.3 had filed that Petition seeking an appointment on compassionate basis. His father was working as Headmaster in Zilla Parishad, Kolhapur. He having passed away, the Respondent No.3 sought an appointment by way of compassionate basis. He had done Diploma in Civil Engineering and, therefore, sought a job in the Engineering Department. The Consent Terms recorded that the Respondent No.3 will be initially taken as Mestry Grade II since there was no post of Junior Engineer available at that time which was sought by Respondent No.3. As and when any open category post would become available, he was to be absorbed. There is no dispute that the Respondent No.3 has been appointed as a Mestry Grade II thereafter.

5. The Review Petition points out that the Consent Terms are arrived at in a situation wherein there was an averment in the Petition that the appointment was

required to tie over the difficulties. In paragraph 7 of the Petition, it is averred thus : "The purpose of providing the appointment on compassionate grounds is to mitigate the hardship due to death of the bread earner in the family".

6. The Zilla Parishad subsequently discovered that the mother of Respondent No.3 was working in the Zilla Parishad as a teacher and she continues to be in their employment even now. Review is filed by submitting that this relevant information was not brought to the notice of the Zilla Parishad. If this information was made available, obviously the Respondent No.3 would not have been given the employment on which he has been employed. A reference is also made to the particular format which such applicants are supposed to file as per the Government Resolution dated 26th October 1994. Clause 4 of Schedule B to this Government Resolution specifically requires the candidate to provide the details of all the family members and as to whether any one of them is engaged in any employment/business and, if so, what is the monthly income. Mr.Shetye, learned Counsel for the Applicant Zilla Parishad, submits that this information having not been furnished, the Consent Terms were arrived at on an erroneous footing.

7. Mr.Bandiwadekar, learned Counsel appearing for

Respondent No.3, submits that the Respondent No.3 was never provided with any such form. He was never called upon to state as to whether anybody from the family was employed. Therefore, there was no question of suppressing any information. He submits that the Zilla Parishad ought to have obtained necessary information from the concerned Department. The Zilla Parishad entered into these Consent Terms and they are binding on the Zilla Parishad and there is no need to review the Order passed.

8. Now, as far as compassionate appointment is concerned, it is well settled that compassionate appointment is provided essentially to tie over the difficulties faced by a family. Firstly, there is no right that one should be employed at all in the event of death in the family. Secondly, the person to be employed cannot insist that he should be employed in any particular post. In the present case, what has happened is that there is a clear averment in the Petition in paragraph 7, as pointed out above, that the employment was required to mitigate the hardships due to the death of the bread earner. It is obviously implied that nobody is employed in the family. The Respondent No.3 can’t be stated to have been made false statement on oath and can’t be proceeded for perjury for that matter. However, it cannot be denied that an impressions was undoubtedly

given to the Zilla Parishad that nobody was engaged gainfully in the family. It is true that the Zilla Parishad ought to have made enquiries. However, the mother of Respondent No.3 is engaged in a school. The Zilla Parishad cannot be expected to get all that information from various sections whereunder thousand of employees are employed. It is the claimant concerned who is expected to give this information but it appears that perhaps the correct form was not given to him.

9. In any case, obviously, there is error apparent on the face of record in the order passed by the Division Bench inasmuch as it has been passed on a representation that there is a need of appointment of the Respondent No.3 since there is no bread earner in the family. If the information with respect to the gainful employment of the mother of Respondent No.3 was provided to the Court, the Court would not have passed the order which it has passed. In the circumstances, it is necessary to recall the order dated 8th October 1999 passed by the Division Bench, though it is an order in terms of the Minutes signed by the parties. Mr.Shetye has stated that the Zilla Parishad would not have signed the Minutes if the correct information was available to the Zilla Parishad. There has been some delay in filing this Review Petition. However, we condone the same and allow this Review Petition and recall the order passed by the Division

Bench in Writ Petition No.4608 of 1999 on 8th October 1999.

10. Although we are recalling the order passed by the Division Bench earlier, we cannot ignore that Respondent No.3 has been appointed in the meanwhile in the post of Mestry Grade II. Mr.Shetye has been fair enough to state that the Zilla Parishad does not intend to disturb his present employment. Needless to state that he will be entitled to his promotions as and when any occasion arises for being upgraded. Zilla Parishad is, however, relieved of its obligation to give him an appointment as an Junior Engineer as agreed in the Minutes of Order.

11. Mr.Bandiwadekar points out that there is no such post as Mestry Grade II any longer in the Zilla Parishad. If this is the position, we direct the Zilla Parishad to adjust the Respondent No.3 in an appropriate post comparable to the post of Mestry Grade II as per the establishment schedule. The Zilla Parishad will take decision in this behalf in the light of the governing resolutions passed by the State Government. The Zilla Parishad will take necessary steps within four weeks hereafter and in any case by end of July 2005.

12. Review Petition allowed in these terms, though there will not be any order as to costs.

(H.L. GOKHALE, J.)

(S.P. KUKDAY, J.)